

Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 14-0903.01 Jerry Barry x4341

SENATE BILL 14-193

SENATE SPONSORSHIP

Carroll and Lundberg,

HOUSE SPONSORSHIP

Singer,

Senate Committees
Judiciary

House Committees
State, Veterans, & Military Affairs

HOUSE
3rd Reading Unamended
May 7, 2014

HOUSE
Amended 2nd Reading
May 6, 2014

A BILL FOR AN ACT

101 **CONCERNING CONFORMING COLORADO LAW ON LOCATION**
102 **INFORMATION WITH THE FOURTH AMENDMENT AS**
103 **INTERPRETED BY THE UNITED STATES SUPREME COURT IN**
104 **UNITED STATES V. JONES.**

SENATE
3rd Reading Unamended
May 1, 2014

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

A United States supreme court decision held that the use of a GPS device to monitor a vehicle's movement constituted a search requiring the

SENATE
Amended 2nd Reading
April 30, 2014


Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

government to obtain a search warrant. With certain specified exceptions, the bill prohibits a governmental entity from obtaining location information from an electronic device without first obtaining a search warrant.

If location information or evidence derived from location information is used in a court proceeding, all parties must receive a copy of the search warrant and application at least 10 days prior to the proceeding. A judge may waive the 10-day requirement in certain circumstances.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 hereby finds that:

4 
5 (a) The right to be protected from unreasonable searches and
6 seizures has been guaranteed by the fourth amendment to the United
7 States constitution for over 220 years;

8 (b) The right of people in Colorado to be protected from
9 unreasonable searches and seizures has been guaranteed by section 7 of
10 article II of the Colorado constitution since its adoption in 1876; and

11 (c) It is necessary to clarify that people in Colorado are protected
12 from searches conducted by the government using electronic devices to
13 track the location of the device unless the government first obtains a
14 lawful search warrant or is acting in accordance with a constitutionally
15 recognized exception to the search warrant requirement.

16 (2) It is the intent of the general assembly to implement and give
17 full effect to the fourth amendment of the United States constitution and
18 section 7 of article II of the Colorado constitution, as applied to the
19 government's use of location information of an electronic device.

20 **SECTION 2.** In Colorado Revised Statutes, **add** 16-3-303.5 as

1 follows:

2 **16-3-303.5. Location information - search warrant required**

3 **- definitions.** (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT
4 OTHERWISE REQUIRES:

5 (a) "ELECTRONIC COMMUNICATION SERVICE" MEANS A SERVICE
6 THAT PROVIDES THE ABILITY TO SEND OR RECEIVE WIRE OR ELECTRONIC
7 COMMUNICATIONS TO USERS OF THE SERVICE.

8 (b) "ELECTRONIC DEVICE" MEANS A DEVICE THAT ENABLES ACCESS
9 TO OR USE OF AN ELECTRONIC COMMUNICATION SERVICE, REMOTE
10 COMPUTING SERVICE, OR LOCATION INFORMATION SERVICE.

11 (c) "GOVERNMENT ENTITY" MEANS A STATE OR LOCAL AGENCY,
12 INCLUDING BUT NOT LIMITED TO A LAW ENFORCEMENT ENTITY OR ANY
13 OTHER INVESTIGATIVE ENTITY, AGENCY, DEPARTMENT, DIVISION, BUREAU,
14 BOARD, OR COMMISSION, OR AN INDIVIDUAL ACTING OR PURPORTING TO
15 ACT FOR OR ON BEHALF OF A STATE OR LOCAL AGENCY.

16 (d) "LOCATION INFORMATION" MEANS INFORMATION CONCERNING
17 THE LOCATION OF AN ELECTRONIC DEVICE THAT, IN WHOLE OR IN PART, IS
18 GENERATED OR DERIVED FROM OR OBTAINED BY THE OPERATION OF AN
19 ELECTRONIC DEVICE ON A CELLULAR TELEPHONE NETWORK OR A
20 LOCATION INFORMATION SERVICE RATHER THAN OBTAINED FROM A
21 SERVICE PROVIDER.

22 (e) "LOCATION INFORMATION SERVICE" MEANS THE PROVISION OF
23 A GLOBAL POSITIONING SERVICE OR OTHER MAPPING, LOCATIONAL, OR
24 DIRECTIONAL INFORMATION SERVICE.

25 (f) "REMOTE COMPUTING SERVICE" MEANS THE PROVISION OF
26 COMPUTER STORAGE OR PROCESSING SERVICES BY MEANS OF AN
27 ELECTRONIC COMMUNICATIONS SYSTEM.

1 (2) EXCEPT AS PROVIDED IN SUBSECTION (3) OR (4) OF THIS
2 SECTION, A GOVERNMENT ENTITY SHALL NOT OBTAIN THE LOCATION
3 INFORMATION OF AN ELECTRONIC DEVICE WITHOUT A SEARCH WARRANT
4 ISSUED BY A COURT PURSUANT TO THE PROVISIONS OF THIS PART 3, A
5 SUBPOENA, OR A COURT ORDER.

6 (3) A GOVERNMENT ENTITY MAY OBTAIN LOCATION INFORMATION
7 OF AN ELECTRONIC DEVICE WITHOUT A WARRANT, SUBPOENA, OR COURT
8 ORDER UNDER ANY OF THE FOLLOWING CIRCUMSTANCES:

9 (a) THE DEVICE IS REPORTED STOLEN BY THE OWNER;

10 (b) IN ORDER TO RESPOND TO THE USER'S CALL FOR EMERGENCY
11 SERVICES;

12 (c) WITH THE INFORMED, AFFIRMATIVE CONSENT OF:

13 (I) THE OWNER OR USER OF THE ELECTRONIC DEVICE;

14 (II) THE NEXT OF KIN OF THE OWNER OR USER OF THE ELECTRONIC
15 DEVICE IF THE OWNER OR USER IS BELIEVED TO BE DECEASED OR IS
16 REPORTED MISSING AND UNABLE TO BE CONTACTED; OR

17 (III) THE CHILD'S PARENT OR LEGAL GUARDIAN IF THE OWNER OR
18 USER IS UNDER EIGHTEEN YEARS OF AGE;

19 (d) THERE EXIST EXIGENT CIRCUMSTANCES SUCH THAT THE
20 SEARCH WOULD BE RECOGNIZED AS CONSTITUTIONALLY PERMISSIBLE
21 WITHOUT THE WARRANT;

22 (e) A REPRESENTATIVE OF THE GOVERNMENT ENTITY HAS A GOOD
23 FAITH BELIEF THAT HIS OR HER ACTIONS WERE LEGAL AND, UNDER THE
24 INFORMATION AVAILABLE AT THE TIME, A REASONABLE PERSON WOULD
25 BELIEVE THAT HIS OR HER ACTIONS WERE LEGAL;

26 (f) THE OWNER OR USER OF THE ELECTRONIC DEVICE HAS
27 VOLUNTARILY OR PUBLICLY DISCLOSED THE LOCATION INFORMATION;

1 (g) THE ELECTRONIC DEVICE HAS BEEN ABANDONED BY THE
2 OWNER OR USER; OR

3 (h) IN ACCORDANCE WITH ANY OTHER JUDICIALLY RECOGNIZED
4 EXCEPTION TO THE SEARCH WARRANT REQUIREMENT.

5 (4) THE PROVISIONS OF THIS SECTION DO NOT APPLY TO PROBATION
6 DEPARTMENTS WITHIN THE JUDICIAL DEPARTMENT OR TO THE DIVISION OF
7 ADULT PAROLE WITHIN THE DEPARTMENT OF CORRECTIONS.

8 (5) ANY EVIDENCE OBTAINED IN VIOLATION OF THIS SECTION IS
9 NOT ADMISSIBLE IN A CIVIL, CRIMINAL, OR ADMINISTRATIVE PROCEEDING
10 AND SHALL NOT BE USED IN AN AFFIDAVIT OF PROBABLE CAUSE IN AN
11 EFFORT TO OBTAIN A SEARCH WARRANT, SUBPOENA, OR COURT ORDER. IN
12 ORDER TO SEEK SUPPRESSION OF EVIDENCE PURSUANT TO THIS
13 SUBSECTION (5) IN ANY PROCEEDING, THE PERSON SEEKING THE
14 SUPPRESSION OF EVIDENCE MUST HAVE AN OWNERSHIP, LEASEHOLD,
15 RENTAL, OR LEGITIMATE POSSESSORY INTEREST IN OR A REASONABLE
16 EXPECTATION OF PRIVACY IN THE ELECTRONIC DEVICE AT ISSUE.

17 (6) (a) A COURT SHALL NOT ADMIT LOCATION INFORMATION
18 OBTAINED PURSUANT TO THIS SECTION OR EVIDENCE DERIVED FROM THAT
19 INFORMATION AT A TRIAL, HEARING, OR OTHER PROCEEDING UNLESS THE
20 PARTY SEEKING TO INTRODUCE THE EVIDENCE PROVIDES A COPY OF THE
21 WARRANT, SUBPOENA, OR COURT ORDER AND ANY ACCOMPANYING
22 AFFIDAVIT TO EACH PARTY PURSUANT TO RULE 16 OF THE COLORADO
23 RULES OF CRIMINAL PROCEDURE, OR ANY SUCCESSOR RULE.

24 (b) A COURT MAY WAIVE THE _____ REQUIREMENT UNDER
25 PARAGRAPH (a) OF THIS SUBSECTION (6) IF THE COURT FINDS THAT IT WAS
26 NOT POSSIBLE TO PROVIDE A PARTY WITH THE WARRANT, SUBPOENA, OR
27 COURT ORDER AND ANY ACCOMPANYING APPLICATION WITHIN THE TIME

1 REQUIRED BY RULE 16 OF THE COLORADO RULES OF CRIMINAL PROCEDURE,
2 OR ANY SUCCESSOR RULE, _____ AND THAT THE PARTY WILL NOT BE
3 PREJUDICED BY THE DELAY IN RECEIVING THE INFORMATION.

4 (7) AN ELECTRONIC COMMUNICATION SERVICE PROVIDER, ITS
5 OFFICERS, EMPLOYEES, OR AGENTS ARE NOT LIABLE FOR PROVIDING
6 INFORMATION, FACILITIES, OR ASSISTANCE IN COMPLIANCE WITH THE
7 TERMS OF A SEARCH WARRANT, SUBPOENA, OR COURT ORDER ISSUED
8 PURSUANT TO THIS SECTION OR WHEN PROVIDED WITHOUT A WARRANT,
9 SUBPOENA, OR COURT ORDER ISSUED PURSUANT TO THIS SECTION OR IF
10 OTHERWISE PROVIDED FOR BY LAW.

11 (8) THIS SECTION DOES NOT APPLY TO A LAW ENFORCEMENT
12 AGENCY OBTAINING BASIC SUBSCRIBER INFORMATION FROM AN
13 ELECTRONIC COMMUNICATIONS SERVICE PROVIDER PURSUANT TO A VALID
14 SUBPOENA, COURT ORDER, OR SEARCH WARRANT.

15 **SECTION 3. Safety clause.** The general assembly hereby finds,
16 determines, and declares that this act is necessary for the immediate
17 preservation of the public peace, health, and safety.